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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 CINDY ELLEN OCHOA, an
8 individual,

9 Plaintiff,

10 v.

11 SERVICE EMPLOYEES
12 INTERNATIONAL UNION LOCAL
13 775, an unincorporated labor
14 association, *et al.*,

15 Defendants.

NO. 2:18-CV-0297-TOR

ORDER GRANTING DEFENDANT
PUBLIC CONSULTING GROUP,
INC., AND PUBLIC PARTNERSHIPS
LLC'S MOTION TO DISMISS

15 BEFORE THE COURT is Defendant Public Consulting Group, Inc., and
16 Defendant Public Partnerships LLC's Joint Motion to Dismiss (ECF No. 43). The
17 Motion was submitted for consideration without a request for oral argument. The
18 Court has reviewed the record and files herein, and is fully informed. For the
19 reasons discussed below, the Motion (ECF No. 43) is **granted**.

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ORDER GRANTING DEFENDANT PUBLIC CONSULTING GROUP,
INC.'S MOTION TO DISMISS AND PUBLIC PARTNERSHIPS LLC'S
MOTION TO DISMISS ~ 1

BACKGROUND¹

This case arises out of the alleged wrongful withholding of union dues from Ms. Cindy Ochoa's paycheck. In short, Ochoa is an employee of the State of Washington. Defendants Public Consulting Group, Inc., and Public Partnership, LLC, (collectively PCG/PPL²) provide payroll services on behalf of the State. As part of the service, PCG/PPL withhold union dues and remit them to the Service Employees International Union Local 775 (SEIU 775). Pursuant to the State's direction, PCG/PPL rely entirely on SEIU 775 in determining from whom dues should be withheld. *See* ECF No. 39 at 9, ¶¶ 50-52. In other words, as the Court previously observed, PCG/PPL, provide passive payroll services based on the information given to them.

The Court recently granted PCG/PPL's Motion to Dismiss for failure to state a claim. ECF No. 38. Plaintiff submitted an Amended Complaint (ECF No. 39) and Defendants now renew their request for dismissal (ECF No. 43).

¹ Given the underlying substance of the allegations is detailed in this Court's previous Order Granting Defendants' Motion to Dismiss (ECF No. 38), the Court need not recount them here.

² For the purposes of this Order, the distinction between PCG and PPL is not material.

1 DISCUSSION

2 PCG/PPL argue dismissal is proper because Plaintiff's Amended Complaint
3 suffers from the same flaws identified in Defendants previous Motion to Dismiss
4 and the Court's Order granting the Motion. ECF No. 43 at 2. The Court agrees.

5 Ultimately, as PCG/PPL recognize, Plaintiff's Amended Complaint "fares
6 no better" than the previous Complaint. ECF No. 43 at 2. The Court notes that
7 many of the arguments raised by the Parties have been sufficiently addressed in
8 this Court's previous Order and the additional allegations do not impact the
9 analysis. As such, the Court will only address the newly raised legal argument in
10 Plaintiff's Response (ECF No. 46) and the additional, substantive factual
11 allegations in the Amended Complaint (ECF No. 39).

12 Plaintiff's Amended Complaint does not allege any substantive facts that
13 would change the analysis the Court put forth in its previous Order Granting
14 Motion to Dismiss (ECF No. 38). Plaintiff simply adds meat to PCG/PPL's
15 operations, *see* ECF No. 39 at 6-9, ¶¶ 25-47, and details more interactions between
16 Plaintiff and employees of PCG/PPL in trying to stop the withholding of her funds,
17 who ultimately pointed her to SEIU 775, *see* ECF No. 39 at 12, ¶¶ 66-73; 16-17, ¶¶
18 93-96. The critical facts – that PCG/PPL provide passive payroll services (as a
19 mere instrument) at the direction of the State based on information provided to
20 them – remain the same. Notably, Plaintiff makes no effort to discuss how the new

1 allegations save Plaintiff's claim.

2 Plaintiff raises the new argument that PCG/PPL are state actors because
3 disbursing Medicaid funds – part of their payroll services – is “a roll that has
4 traditionally been the exclusive prerogative of government.” ECF No. 46 at 11-12.
5 Plaintiff does not provide any case law supporting its position that a payroll service
6 provider that disburses Medicaid funds is a government actor. Rather, Plaintiff
7 simply argues that “[t]he spending of public monies, specifically Medicaid, has
8 traditionally and exclusively been the prerogative of the federal and state
9 governments, since Medicaid’s inception in 1965.” ECF No. 46 at 11. The Court
10 declines to adopt such a novel argument, especially where it would turn every
11 private entity that disburses funds on behalf of the government into a state actor.
12 *See Rendell-Baker v. Kohn*, 457 U.S. 830 (1982) (“The school, like the nursing
13 homes, is not fundamentally different from many private corporations whose
14 business depends primarily on contracts to build roads, bridges, dams, ships, or
15 submarines for the government. Acts of such private contractors do not become
16 acts of the government by reason of their significant or even total engagement in
17 performing public contracts.”).

18 Given Plaintiff’s failed attempt to allege a plausible claim against PCG/PPL
19 in the Amended Complaint, the Court finds amendment as to these claims is futile.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**


2 Defendant Public Consulting Group, Inc., and Defendant Public Partnerships
3 LLC's Joint Motion to Dismiss (ECF No. 43) is **GRANTED**.

4 The District Court Executive is directed to enter this Order, dismiss
5 Defendant Public Consulting Group, Inc., and Defendant Public Partnerships LLC
6 from the case, and furnish copies to the parties.

7 **DATED** July 12, 2019.



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THOMAS O. RICE
Chief United States District Judge